



DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-829]

Steel Concrete Reinforcing Bar from the Republic of Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 4, 2020, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (Commerce) third remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Amended Final Determination* in the LTFV investigation of rebar from Turkey. Pursuant to the CIT's final judgment, Commerce is amending the estimated weighted-average dumping margins for respondents Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), and all other producers and exporters of subject merchandise.

DATES: Applicable September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2371.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2017, Commerce published its *Final Determination* in the LTFV investigation of rebar from Turkey.¹ Subsequently, on July 14, 2017, Commerce published its *Amended Final Determination and Order*.² As reflected in Commerce's *Amended Final Determination*, Commerce calculated estimated weighted-average dumping margins of 5.39 percent for Habas, 9.06 percent for Icdas, and 7.43 percent for all other producers and exporters of subject merchandise.³

Habas and Icdas appealed Commerce's *Final Determination*, as amended by the *Amended Final Determination*, to the CIT. On January 23, 2019, the CIT remanded the *Amended Final Determination* for Commerce to: (1) reconsider its calculation of the plaintiffs' duty drawback adjustment; and (2) reconsider the application of partial adverse facts available (AFA) to Icdas.⁴ On May 17, 2019, Commerce issued its first results of redetermination, in which it determined to: (1) grant Habas and Icdas the full amount of duties that were drawn back or forgiven to U.S. price, and add the same per unit duty amount to normal value (NV) as a circumstance-of-sale (COS) adjustment; and (2) continue to find that the application of partial AFA to Icdas, concerning its failure to provide the manufacturer information for certain sales in the home market, was appropriate.⁵ As a result of the changes in the *First Redetermination*, Commerce calculated estimated weighted-average dumping margins of 4.98 percent for Habas,

¹ See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum.

² See *Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders*, 82 FR 32532 (July 14, 2017) (*Amended Final Determination and Order*).

³ *Id.*, 82 FR at 32533.

⁴ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S., and Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S. v. United States*, 361 F. Supp. 3d 1314 (CIT 2019).

⁵ See *Final Results of Redetermination Pursuant to Court Remand, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S., et al., v. United States*, Consol. Ct. No. 17-00204, Slip Op. 19-10, dated May 17, 2019 (*First Redetermination*), available at <https://enforcement.trade.gov/remands/19-10.pdf>.

8.66 percent for Icdas, and 7.03 percent for all other producers and exporters of subject merchandise.⁶

On October 17, 2019, in its *Second Remand Order*, the CIT sustained Commerce's duty drawback adjustment as applied to export price, but remanded Commerce to recalculate NV without making a COS adjustment in the same amount. The CIT also sustained Commerce's use of partial AFA with respect to Icdas.⁷

On January 15, 2020, Commerce issued its second results of redetermination, in which it recalculated each respondent's NV without making the COS adjustment related to duty drawback.⁸ In addition, Commerce made an adjustment to cost in the amount of the duty forgiven divided by the production data to arrive at the annual average per-unit import duty burden, which was added to the cost of production. Commerce continued to adjust the full amount of duties drawn back to U.S. price as in the *First Redetermination*. As a result of the changes to our duty drawback methodology in the *Second Redetermination*, Commerce calculated estimated weighted-average dumping margins of 4.08 percent for Habas, 4.17 percent Icdas, and 4.13 percent for all other producers and exporters of subject merchandise.⁹

On April 17, 2020, in its *Third Remand Order*, the CIT granted Commerce's request for voluntary remand and ordered Commerce to include Inward Processing Certificate (IPC) # 36 in its duty drawback calculation for Habas.¹⁰ On July 1, 2020, in the third results of redetermination, Commerce revised Habas' duty drawback calculation to include IPC # 36, which had mistakenly been omitted previously.¹¹ As a result of this revision to Habas' duty

⁶ See *First Redetermination* at 21.

⁷ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. v. United States*, 415 F. Supp. 3d 1195 (CIT 2019) (*Second Remand Order*).

⁸ See *Final Results of Redetermination Pursuant to Court Remand, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Consol. Ct. No. 17-00204, Slip Op. 19-130, dated January 15, 2020 (*Second Redetermination*), available at <https://enforcement.trade.gov/remands/19-130.pdf>.

⁹ *Id.* at 4.

¹⁰ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. v. United States*, 439 F. Supp. 3d 1342 (CIT 2020) (*Third Remand Order*).

¹¹ See *Final Results of Redetermination Pursuant to Court Remand, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Consol. Ct. No. 17-00204, Slip Op. 20-51, dated July 1, 2020 (*Third Redetermination*), available at <https://enforcement.trade.gov/remands/20-51.pdf>.

drawback calculation in the *Third Redetermination*, Commerce calculated an estimated weighted-average dumping margin of 3.96 percent for Habas, and 4.07 percent for all other producers and exporters of subject merchandise. Icdas’ weighted-average dumping margin remained at 4.17 percent calculated in the *Second Redetermination*.¹² On September 4, 2020, the court sustained Commerce’s *Third Redetermination*.¹³

Timken Notice

In its decision in *Timken*,¹⁴ as clarified by *Diamond Sawblades*,¹⁵ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 4, 2020 judgment constitutes a final decision of the Court that is not in harmony with Commerce’s *Amended Final Determination*.¹⁶ Thus, this notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Amended Final Determination*. The revised estimated weighted-average dumping margins are as follows:

Exporter or Producer	Weighted-Average Dumping Margin (percent)	Cash deposit (adjusted for subsidy offsets)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	3.96	3.92
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	4.17	4.00
All Others	4.07	3.90

¹² *Id.* at 5.

¹³ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. v. United States*, 470 F.Supp. 3d 1363 (CIT September 4, 2020)

¹⁴ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁵ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁶ See *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. v. United States*, 470 F.Supp. 3d 1363 (CIT September 4, 2020).

Cash Deposit Requirements

Because there have been subsequent administrative reviews for Habas and Icdas, the cash deposit rate will remain the rates established in the most recently completed administrative reviews for these companies. The cash deposit rate for all other producers and exporters is revised from 7.26 percent in the *Amended Final Determination and Order* to 3.90 percent, as a result of the final court decision.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), 735(d), 736(a), 751(a) and 777(i) of the Act.

Dated: December 30, 2021.

Ryan Majerus,
*Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.*

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